Editor's note: Appealed -- aff'd, Civ. No. 73-129-S (S.D. Calif. May 16, 1978), aff'd No. 78-2588 (9th Cir. May 8, 1980)

UNITED STATES
v.
LLOYD O'CALLAGHAN, SR., ET AL.

IBLA 76-112 Decided March 31, 1977

Appeal from decision of Administrative Law Judge Dean F. Ratzman, declaring the Bolsa de Oro No. 5 placer mining claim null and void.

Affirmed.

1. Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

   A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

2. Mining Claims: Common Varieties of Minerals: Generally --Mining Claims: Determination of Validity--Mining Claims: Discovery: Marketability

   With respect to materials as common as sand and gravel, a mining claimant must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit, and since common varieites were declared no longer locatable by the Act of July 23, 1955, 30 U.S.C. § 611, that a reasonably continuous market has existed from enactment of the statute.

3. Contests and Protests: Generally--Evidence: Burden of Proof--Mining Claims: Contests--Rules of Practice: Evidence--Rules of Practice: Government Contests

   The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant, but if the Government in a contest fails to present a prima facie case and the contestee moves to dismiss the case and rests, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

4. Contests and Protests: Generally--Evidence: Generally-- Mining Claims: Contests--Rules of Practice: Evidence-- Rules of Practice: Government Contests

   In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by contestee shows there has not been a discovery, it may be used in reaching a decision that the claim is invalid regardless of any defects in the prima facie case.

5. Contests and Protests: Generally--Evidence: Burden of Proof--Mining Claims: Contests--Rules of Practice: Evidence--Rules of Practice: Government Contests

   Where the Government has made a prima facie case of lack of discovery in a mining contest, and a mining claimant fails to show discovery by a preponderance of the evidence, he has not satisfied his burden of proof and the claim must be declared invalid.

APPEARANCES: Lowell F. Sutherland, Esq., Sutherland, Stamper & Feingold, El Centro, California, for appellants; Robert D. Conover, Esq., Office of the Solicitor, U.S. Department of the Interior, Riverside, California, for appellee.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Lloyd O'Callaghan, Sr., and others 1/ appeal from the July 7, 1975, decision of Administrative Law Judge Dean F. Ratzman declaring the Bolsa de Oro No. 5 placer mining claim null and void. The claim is situated along the southern edge of the Coyote Mountains near the mouth of Fossil Canyon, Imperial County, California.

Contest proceedings were originally initiated against the Bolsa de Oro No. 5 and two adjacent claims. After the hearing, Administrative Law Judge Graydon E. Holt issued his decision declaring the three placer mining claims null and void for the lack of a timely discovery of a locatable mineral deposit. He found (1) that the sand and gravel deposit on all three claims is a common variety which was excluded from location under the mining laws on July 23, 1955; (2) the two adjacent claims were located after that date and the sand and gravel therefore cannot be considered as a locatable mineral; (3) the tertiary clays found on the claims are common clays not subject to location under the mining laws; and (4) there has not been a discovery of a valuable gold, silver or mercury deposit on any of the claims.

On appeal, the Board affirmed Judge Holt's decision that the three claims were null and void, and also determined that no discovery prior to July 23, 1955, had been proved as to Bolsa de Oro #5. United States v. Lloyd O'Callaghan, Sr., 79 I.D. 689, 8 IBLA 324 (1972). The appellants filed a suit for judicial review in O'Callaghan v. Morton, Civil No. 73-129-S (S.D. Cal.). By order dated May 14, 1974, the Court granted summary judgment in favor of the Department with respect to the two adjacent claims, but found that the Bolsa decision was "unsupported by the evidence in that the Administrative Law Judge made no finding with regard to whether or not there had been a discovery within the meaning of the mining laws of a valuable sand and gravel deposit as of July 23, 1955."

The Court remanded "for a determination by the Administrative Law Judge as to whether or not there was a discovery of a valuable sand and gravel deposit on Bolsa de Oro #5 as of July 23, 1955,

---

1/ Appellants are Lloyd O'Callaghan, Sr., Lowell F. Sutherland, William H. Raley and Lenore O'Connor. While Raley and O'Connor are contestees in connection with Coyote Clay #3 and Coyote Clay #4 claims, whether they claim an interest in Bolso de Oro #5 is not clear. Sutherland claims an interest in Bolso.

or for other proceedings not inconsistent with this opinion." Because Judge Holt had retired, the case was assigned to Judge Ratzman, who held hearings at which additional evidence was introduced. On June 13, 1975, the Court issued a further order providing in part:

> IT IS ORDERED, ADJUDGED, AND DECREED that upon remand the Administrative Law Judge is to determine either that there was a discovery under the mining laws of a valuable sand and gravel deposit upon the Bolsa de Oro #5 mining claim prior to July 23, 1955; or that such a discovery was not made; or that there is no sufficient evidence to decide the matter and that, consequently, the contest must be dismissed. This determination is to be based upon the evidence before the Administrative Law Judge as introduced in the hearings held on this matter terminating on April 10, 1970. No new evidence or no evidence subsequently taken in this matter, including the December 8, 1972 decision of the Board of Land Appeals, is to be considered by the Administrative Law Judge.

Pursuant thereto, Judge Ratzman considered the evidence submitted as of April 10, 1970, and we confine our review of Judge Ratzman's decision to consideration of the same evidence. 2/

[1] A valid mining claim exists only where there had been a discovery of a valuable mineral deposit. 30 U.S.C. § 22 (1970). A discovery of a valuable mineral deposit has been made:

> * * * where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine * * *.

Castle v. Womble, 19 L.D. 455, 457 (1894), approved in Chrisman v. Miller, 197 U.S. 313, 322 (1905). With respect to materials as common as sand and gravel, the Department has required that:

> * * * the mineral locator or applicant, to justify his possession, must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit

---

2/ See footnote 6, infra.

> is of such value that it can be mined, removed and disposed of at a profit. * * *

Acting Solicitor's Opinion, 54 I.D. 294, 296 (1933). This "marketability" test was adopted in Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959), and was approved by the Supreme Court as a refinement of the prudent man rule. Coleman v. United States, 390 U.S. 599 (1968). Although "[a]ctual successful exploitation of a mining claim is not required to satisfy the 'prudent-man test,'" Barrows v. Hickel, 447 F.2d 80, 82 (9th Cir. 1971),

> [t]he "marketability test" requires claimed materials to possess value as of the time of their discovery. Locations based on speculation that there may at some future date be a market for the discovered material cannot be sustained. What is required is that there be, at the time of discovery, a market for the discovered material that is sufficiently profitable to attract the efforts of a person of ordinary prudence.

Id. at 83. Thus, in the instant case, not only must the claimant show present marketability, but because there could be no discovery of common varieties of sand and gravel after those materials were declared non-locatable by the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1970), the claimant must show that a market for those materials existed at the time of enactment of the statute. 3/ Multiple Use, Inc. v. Morton, 504 F.2d 448 (9th Cir. 1974); Barrows v. Hickel, supra; Palmer v. Dredge Corp., 398 F.2d 791 (9th Cir. 1968). Thus, a reasonably continuous market for the material from the claims must have been shown to exist from 1955.

3/ Under section 611, sand or gravel which has "some property giving it a distinct and special value" is not deemed a common variety which is no longer locatable. Under the terms of the Court's 1975 order, however, the question of uniqueness is not before the Department on remand. The evidence as to the uniqueness of the sand and gravel deposits on the Bolsa de Oro No. 5 was generally the same as that presented for the adjacent Coyote claims (Tr. 176, 178-80). Judge Holt ruled that the sand and gravel on all three claims was of the common variety. The Board affirmed. As to the adjacent claims, the Court in O'Callaghan upheld the Board's decision that the sand and gravel was not unique. With regard to the sentence beginning at the bottom of page 1 of Judge Ratzman's decision, the issue of uniqueness after July 23, 1955, would be of importance to the issue of discovery under the 1974 Court order, but this matter is controlled by the 1975 order.

The government introduced an aerial photograph taken in April 1953, which shows no road to the claim and the existence of no sand and gravel operation (Ex. 45). The government also introduced the original location notice for the claim, dated January 30, 1955, which stated that "not less than seven (7) cubic yards of material has been removed" (Ex. 1). Evidence of lack of development and sales may support a determination of nonmarketability and hence, invalidity - unless there is direct, positive, credible evidence that a market for the material existed. Melluzzo v. Morton, 534 F.2d 860 (9th Cir. 1976).

[3-5] Judge Ratzman found that a prima facie case had been made against the validity of the claim on the basis of the evidence in the entire record including contestee's evidence. Appellant asserts that this finding was erroneous because the government's evidence considered by itself failed to make a prima facie case. This argument raises an issue concerning the burden of proof in mining claim contests. Judge Ratzman applied the applicable legal principles with respect to this issue which were analyzed by the Board in United States v. Taylor, 19 IBLA 9, 22-25, 82 I.D. 68, 73-74 (1975):

> By locating a mining claim and alleging a discovery of a valuable mineral deposit therein, a mining claimant is asserting a superior right and title to the land over the United States. He is the true proponent of a rule or order that he has complied with the mining laws entitling him to possession of the claim. Consequently, the ultimate burden of proving discovery is always upon the mining claimant. United States v. Springer, 491 F.2d 239, 242 (9th Cir. 1974), cert. denied [419 U.S. 834] (1974); Foster v. Seaton, supra. When the Government contests the claim it has only the burden of going forward with sufficient evidence to make a prima facie case of lack of discovery and then the affirmative burden of disproving the Government's case by a preponderance of the evidence devolves upon the claimant. Id. * * *
>
> If the Government fails to present a prima facie case, a contestee by timely motion may move to have the case dismissed and then rest. The contest complaint would then properly be dismissed because there was no prima facie case making an evidentiary basis for an order of invalidity by lack of discovery, and

no other evidence in the record to support the charges in the complaint. Cf. United States v. Winters, 2 IBLA 329, 339-40, 78 I.D. 193, 197 (1971).

If, however, the contestees go forward, even after filing a motion to dismiss, and present their evidence, that evidence must be considered as part of the entire evidentiary record and weighed in accordance with its probative values. Therefore, even if the Government has failed to make a satisfactory prima facie case, or if its case is weak, evidence presented by contestees which supports the Government's charge may be used against the contestees, regardless of the defects in the Government's case. United States v. Melluzzo, 76 I.D. 181, 188 (1969); 1/ United States v. Foster, 65 I.D. 1, 11 (1958), aff'd, Foster v. Seaton, supra.

Where evidence has been presented on an issue and the Judge does not order a further hearing to resolve factual uncertainties on that issue, those uncertainties, or doubts, must be resolved against the party having the ultimate burden of proof on the issue, the party bearing the risk of nonpersuasion. Thus, if the party having the risk of nonpersuasion does not present sufficient evidence to sustain his burden, he must suffer the consequences of his failure; namely, a ruling against him on the issue upon which there is doubt. See Marcum v. United States, 452 F.2d 36 (5th Cir. 1971); Johnson v. Barton, 251 F. Supp. 474 (W.D. Va. 1966). The application of the burden of proof is to forestall unresolved decisions where evidence has been presented but there are doubts or uncertainties remaining. Therefore, where the Government has made a prima facie case of lack of discovery, any doubt on the issue of discovery raised by the evidence must be resolved against the mining claimant, who bears the risk of nonpersuasion. The Administrative Law Judge has a duty to make findings of fact and conclusions of law on the factual and legal issues raised in a contest. See 5 U.S.C. §§ 556(c)(8), 557 (1970). Where the claimant has failed to meet his burden of proof on discovery, the Judge must find that there has not been a discovery. Foster v. Seaton, supra. Such a finding impels the conclusion that the claim is

invalid, as discovery is a sine qua non of a claim's validity.

1/ Set aside for other reasons, Frank Melluzzo, 1 IBLA 37 (1970).

The Administrative Procedure Act adopts the fundamental principle that the decisions of an agency of the United States ought to be made on the basis of the record. 4/ In asking that the contest be dismissed because the finding of invalidity is partly based on evidence not put forward by the Government, but rather by the contestee, appellant asks that this principle be abrogated and the record ignored.

In addition to the rebuttable presumption against marketability which arises from the lack of development of the claim as shown by Exhibits 1 and 45, we must consider O'Callaghan's own admission that the claim is not valid for sand and gravel. This admission was made in the context of a discussion of the issues in the contest:

> MR. O'CALLAGHAN: * * * I am not claiming predecessory rights to sand and gravel, nor is this an argument over the sand and gravel rights over the Bolsa de Oro 5. It will be in the Coyote Clay 3 and 4, but not in this claim.
>
> HEARING EXAMINER: The only claim involved in this particular hearing is the Bolsa de Oro?
>
> MR. O'CALLAGHAN: Bolsa de Oro 5 and valuable minerals are not found wi[th]in the limits of the claim. We claim that there are valuable minerals within the limits of the claim.
>
> MR. WHEATELY: If I understood you correctly, you are making no contention that you have a valid discovery in connection with the sand and gravel on the claim?
>
> MR. O'CALLAGHAN: In no way, shape or form do I claim a sand, rock and gravel right of the claim. [Emphasis added.]

4/ 5 U.S.C. § 556(d) provides in part as follows:

"A sanction may not be imposed or rule or order issued except upon consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence."

MR. SUTHERLAND: I would like to point out, however, that I do, in so far as my interest may be convergent with Mr. O'Callaghan's claim, sand, rock and gravel --

MR. O'CALLAGHAN: The claim was located originally prior to the Sand, Rock and Gravel Act, but the claim was not taken up for sand, rock and gravel specifically.

MR. SUTHERLAND: It does provide for all minerals, however.

HEARING EXAMINER: Under the present circumstances, sand, gravel, gold, silver and mercury will be the subject under consideration.

MR. WHEATELY: In other words, will we consider all the minerals in connection with the claim, is that correct?

MR. O'CALLAGHAN: Correct.

HEARING EXAMINER: Correct.

(II Tr. 15-16). Such admissions are recognized as probative. See IV J. Wigmore, Evidence, § 1048 et seq. (Chadbourn ed., 1972). Any review of the record of this case must give appropriate probative weight to this admission, and Judge Ratzman rightly considered it in making his decision.

Appellants contend that O'Callaghan's own testimony shows a market for the material existed; the testimony shows that this is far from clear:

* * * * * * *

MR. O'CALLAGHAN: There has been sand and gravel taken off the Bolsa de Oro No. 5 since 1953.

HEARING EXAMINER: How much and what was it used for?

MR. O'CALLAGHAN: Henry Gibson used it, and it was used for road materials. However, my contract with Mr. Gibson read that he was to remove all the rock and all the fines remained on the property and were to be stockpiled for metal processing by me at a later date.

* * * * * * *

HEARING EXAMINER: What period of time did your contract with Mr. Gibson cover?

THE WITNESS: I believe he took material from 1953 to 1956 on verbal contract. And the first written contract with him was 1956 for a period of three years. Then I think in 1958 to 1960 it was, the claim was again returned to my father, and my father leased it to the Ed Mealey Corporation.

* * * * * * *

HEARING EXAMINER: What was the royalty that Mr. Gibson paid you?

THE WITNESS: Ten cents a ton.

HEARING EXAMINER: Where did he get his -- where was his pit? Which claim?

THE WITNESS: It was in the southeast corner of the Bolso de Oro 5.

* * * * * * *

HEARING EXAMINER: How much material did Mr. Gibson remove?

THE WITNESS: One year I received 36 hundred dollars at 10 cents a ton and another year I received 16 hundred dollars, then the claim was returned to my father, and what he got I have no further idea.

HEARING EXAMINER: Did your agreement with Mr. Gibson provide for the removal of sand and gravel from all the claims?

THE WITNESS: No, my agreement with Mr. Gibson only applied to the Bolsa de Oro 5, and he was to remove only the rock and the fines were to be stockpiled and left in place.

HEARING EXAMINER: Why did you limit it to one claim?

THE WITNESS: Because that's all that I owned.

* * * * * * *

HEARING EXAMINER: * * * Since 1958 where has most of the sand and gravel been removed from?

THE WITNESS: Most of the sand and gravel has been removed from the state's pit and the Coyote Clay 3 and 4.

HEARING EXAMINER: Has any material, sand and gravel been removed from the Bolsa de Oro?

THE WITNESS: None has been removed since '63.

MR. SUTHERLAND: I might point out that in that regard, Your Honor, that the pit now runs right up to the edge of Bolsa de Oro 5. There may be some fault in it or something like that.

* * * * * * *

(II Tr. 334-39).

After considering the above testimony, Judge Ratzman made the following determination:

> If Mr. Gibson or some other person removed a quantity of material prior to July 23, 1955, it could have been the small amount excavated when the discovery work described in the location notice was performed. Mr. O'Callaghan did not state that a crusher or processing plant of any kind was on the claim during the 1950's, he did not state when the double track road was built into the claim, and he did not identify the years when he assertedly received $ 3600 and $ 1600 at ten cents a ton. He of course was in the best position to give those details. For all we know removals of substantial quantities by Mr. Gibson took place in the 1960's. In his general reference to written agreements, Mr. O'Callaghan said they were in existence after 1955. It is not likely that an experienced contractor would bring in a gravel plant and process more than 50,000 tons of material under a verbal contract.

Findings and Determination (Re-issued) at 12.

Appellants object to Judge Ratzman's determination that Mr. O'Callaghan did not identify the years he received $ 3,600 and $ 1,600 at 10 cents a ton, but instead of showing which

years these amounts were received, appellant only points to the entire period of the purported agreements between Gibson and O'Callaghan (1953-59). The testimony is most likely to refer to the 2 years (1956-57, 1957-58 or 1958-59) prior to the return of the claim to Mr. O'Callaghan's father in 1958, 1959 or 1960. Claimant O'Callaghan's lack of specificity, and his admission at one point of the hearing that he did not even claim the sand, rock and gravel, cast considerable doubt as to the testimony of valuable contracts with Gibson. Because any sales to Gibson occurred after 1955, they do not necessarily support a finding that a market existed on July 23, 1955. Appellants' other objections are similarly predicated on evidence of sales that occurred at a later time, but the marketability test must have been met as of July 23, 1955. Anticipation of a future market for common varieties of sand and gravel, no matter how prescient, provides no basis for declaring a claim valid where the evidence does not show that a market existed by July 23, 1955. Barrows v. Hickel, quoted supra.

Judge Ratzman noted the State had its own nearby pit since 1954. He further noted the evidence did not show that any specific quantity of the material sold from the claim was sold for qualifying uses as opposed to non-qualifying uses such as road base or fill. Findings and Determination (Re-issued) at 13; United States v. Baker, 23 IBLA 319 (1976); see also United States v. Taylor, supra, citing United States v. Barrows, 76 I.D. 299, 306 (1969), aff'd Barrows v. Hickel, supra. He further found that there has been no continuous operation on the claim since 1963 and that the market since then was satisfied by production from other claims. The findings and the record support the conclusion that for a period after 1963, the claim was being held to meet a future market demand rather than the demand of the market at that time. The absence of a continuous market for the material precludes a finding of validity. Barrows v. Hickel, supra.

Any doubts raised by the evidence must be resolved against the claimant because the claimant bears the ultimate burden of persuasion in a mining claim contest. United States v. Taylor, supra. Judge Ratzman reached his decision by applying the appropriate evidentiary standards to the record as it existed at the

time of Judge Holt's decision. 5/ The Court's order of June 13, 1975, was specifically addressed to the Administrative Law Judge

---

5/ Prior to the Court's order of June 13, 1975, Judge Ratzman, pursuant to his interpretation of the Court's initial remand order, held a hearing for the taking of additional evidence. At that hearing, Henry Gibson testified -- the same Henry Gibson who was alleged to have taken sand and gravel from the Bolsa de Oro No. 5 claim from 1953 to 1956 on the strength of a verbal contract (III Tr. 335). In response to a question from the government's counsel, Mr. Gibson testified that he had had no work in the area of the Bolsa de Oro No. 5 claim prior to 1963 (1975 Tr. 40-41, 47-48), in which year he had an agreement with Mr. O'Callaghan (1975 Tr. 43, Ex. 75-3). Gibson further testified:

"Q. Do you know whether there had been any operations conducted on Bolsa de Oro #5 prior to 1963?

"A. Well, where I set up there on that, there was no operation.

"Q. Had there been any other operations on the quarter section prior to your time?

"A. Not to my knowledge. I didn't see any, or I would have set the crushing plant in the location if there had been prior to that."

(1975 Tr. 48). The government's attorney then asked Gibson about the alleged verbal contract:

"Q. In the prior testimony in these proceedings for the Administrative Law Judge, Mr. Lloyd O'Callaghan testified that he believed that you took material from the area of these claims between 1953 and 1956 on verbal contract; is that correct, do you recall?

"Did you have any verbal agreements with Mr. O'Callaghan prior to the execution of this lease agreement that you've testified to?

"A. No. No."

(1975 Tr. 55). The alleged pre-1955 Gibson contract was extensively argued in appellant's 1975 Statement of Reasons. In accordance with the Court's 1975 order, Judge Ratzman made his determination on the basis of the record as of April 10, 1970.

and there is no indication that the order was intended to include the Board of Land Appeals. 6/ We affirm Judge Ratzman's decision on the basis of the record as limited by the Court.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss

Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

6/ As the agency's final review authority of the initial decision, 43 CFR 4.1, this Board is assigned "all the powers which [the agency] would have in making the initial decision * * *." 5 U.S.C. § 557(b) (1970). Among the Board's responsibilities is the reopening of proceedings for the taking of additional evidence, where such is in the public interest. This authority was explicitly recognized by the United States Court of Appeals for the Ninth Circuit in Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (1976):

"Recognition of the IBLA's power to reconsider under the circumstances of this case is consistent with the fact that it has long been recognized that the Secretary of Interior has broad plenary powers over the disposition of public lands. Cameron v. United States, 252 U.S. 450, 459-64, * * * (1920); Knight v. United States Land Association, 142 U.S. 161, 177, * * * (1891); United States v. Williamson, 75 I.D. 338, 342 (1968). He has a continuing jurisdiction with respect to these lands until a patent issues, and he is not estopped by the principles of res judicata or finality of administrative action from correcting or reversing an erroneous decision by his subordinates or predecessors in interest. United States v. United States Borax Co., 58 I.D. 426, 430 (1943); see In re Burnaugh, 67 I.D. 366 (1960). So long as the legal title remains in the Government, the Secretary has the power and duty upon proper notice and hearing to determine whether the claim is valid. Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336-40, * * * (1963); Cameron v. United States, supra at 460-61 * * *. Where additional evidence is necessary for a final determination, it is appropriate to set aside a former decision and remand a contest proceeding for further hearings. See United States v. Kosanke Sand Corp., 12 IBLA 282, 305 (1973)." (Emphasis added.)

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

My only difference with the majority opinion is the statement (headnote 5 and body) that if in a contest, contestee fails to establish a discovery by a preponderance of evidence, the claim "must be declared invalid." My views on this issue are enunciated in United States v. Bartels, 6 IBLA 124, at 143-149 (1972).

However, in the case at bar the minerals involved are sand and gravel. The claim could be located and perfected only prior to July 23, 1955, 30 U.S.C. § 601 et seq. (1970). Therefore, I must agree that in this case, given the failure of contestee to successfully bear the risk of non-persuasion, the claim Bolsa de Oro No. 5, is properly declared null and void.

Frederick Fishman

Administrative Judge